

SEP 16 1983

No. 83-194

ALEXANDER L. STEVENS
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

MICHAEL BURTON, as personal
representative of BETTY BUGHMAN
BURTON WILLIAMS, deceased,
Petitioner,

VS.

PACIFIC FAR EAST LINES, INC.,
a corporation,
Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITIONER'S REPLY MEMORANDUM

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Respondent neither addresses the Questions Presented in the petition, nor denies their validity. Instead, it attempts to obscure them:

Respondent disavows its own 30-month delay. It cites assorted issues raised in its Motion to Dismiss, none of which were decided by the Courts below. Likewise, it refers to Local Rule 235-10, which the Ninth Circuit did not mention. The District Court discussed the Rule, but indicated no reliance upon its presumptions. See Appendix to Petition, A-6.

Central to respondent's argument is the concept that inconsistency produces its own justification: Hundreds of courts have applied Rule 41(b). Authority may exist for *any* approach to it.

Unlike the case at bar, *Chira v. Lockheed Aircraft Corp.* 634 F.2d 664 (2d Cir. 1980) involved disobedience to a court order and complete absence of prosecution. The *Chira* Court, while omitting the issue of prejudice, considered lesser sanctions than dismissal. It found them "impotent." *Id.* at 665, 666. It found *both* plaintiff and his attorney culpable. *Id.* at 665, 667.

It may be, as respondent claims, that unnamed decisions accord with the opinion below. To argue their existence, however, begs the question: *Must alternative sanctions and mitigating factors be considered before a case is dismissed for delay?* Or is such consideration merely a luxury afforded to some plaintiffs, denied to others?

The answer to this question affects profoundly the quality of justice to be found in the Federal Courts. Petitioner submits that the writ should issue as prayed.

Respectfully submitted,

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